MERGER ANTITRUST LAW

LAW 1469
Georgetown University Law Center
Fall 2025

Tuesdays and Thursdays, 3:30 pm – 5:30 pm
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Reading Guidance

Class 8 (September 18): Hertz/Avis Budget/Dollar Thrifty (Unit 4)

On Thursday, we begin a case study of the contested takeover battle between Hertz and Avis Budget to acquire Dollar Thrifty. Over two classes, we will go through the transaction from beginning to end in some detail. We will explore:

- The reasons why Hertz and Avis Budget each wanted to acquire Dollar Thrifty
- The antitrust obstacles perceived in each transaction
- The ways each bidder sought to assuage Dollar Thrifty's concerns that their respective deals would close despite these perceived antitrust problems
- Dollar Thrifty's strategy in balancing a high purchase price with obtaining protections in the contract to assure (with some acceptable probability) the certainty of closing ("deal certainty")
- The possible restructuring of the transactions through the divestiture of assets to eliminate the likely antitrust concerns of the investigating agency and allow the deal to close with a consent decree, but without litigation
- Why Dollar Thrifty ultimately chose Hertz as the winning bidder
- The divestiture consent decree the FTC accepted in 2014 that allowed the Hertz/Dollar Thrifty deal to close

The first class will examine the first stage in this saga: the original 2010 merger agreement pursuant to which Hertz would acquire Dollar Thrifty. We will focus on the motivations of each party to enter into the deal. The deal rationale of the parties is a critical element in the merger antitrust analysis. Parties enter into merger transactions to make money, not out of the goodness of their heart. Each party will have its own model of how it will make money through the transaction. A central antitrust question asks what are the implications of these models for the postmerger exercise of market power to the detriment of various groups of customers.

First, to set the stage, read the brief overview of the rental car market environment in which the agreement was reached (pp. 5-11). Then read the Hertz news release announcing the deal and the Hertz investor presentation explaining its deal rationale (pp. 12-21). Dollar Thrifty gives its perspective in a letter to its employees and in some talking points (pp. 22-24).

Next, read the observations on the 2010 Hertz/Dollar Thrifty deal (pp. 25-40). These materials will allow us to examine various types of deal structures, the often observed tendency of the target stock price to increase in the period before the deal announcement, some thoughts about how deal prices are determined and the forms the consideration may take, why acquisitions of

control almost always require the acquiring firm to pay a "deal premium" above the market price for the target's stock, and why the price of the acquiring firm's stock often falls with the deal announcement. As we will see, contrary to the usual situation, the price of the Hertz stock increased with the announcement of the Dollar Thrifty deal. We will examine why this happened and what this indicated about the possibility of a competing bidder emerging.[1]

You may consider this the "investment banking" portion of the class. In reading the materials for this class, keep in mind the following questions (you will meet them again in class):

In 2007, what were the major rental car companies in the United States and on which business segments did they focus?

How do rental car companies make money? (Look at both the output they sell and the inputs they buy.)

Why were rental car company consolidations becoming increasingly attractive?

Why did Dollar Thrifty consider putting itself up for sale in late 2007?

Why did Dollar Thrifty call off negotiations with Hertz in early 2009?

What did Hertz do after the Dollar Thrifty negotiations ended and why did it do it?

When negotiations between Hertz and Dollar Thrifty resumed in late 2009, why did Dollar Thrifty not approach Avis Budget to try to get a bidding war started?

What were the financial terms of the 2010 Hertz/Dollar Thrifty deal?

Why did Hertz pay a "merger premium" (often called a "deal premium") for Dollar Thrifty? How much was it, and how was it calculated? How could Hertz afford to pay a premium above Dollar Thrifty's market price?

How did Hertz believe that it would make money from this deal? How did Dollar Thrifty believe it (actually, its shareholders) would make money from the deal? When did Hertz expect to close the deal?

What needed to happen before Hertz could close the deal?

How was the combination to be legally effected (i.e., what was the legal structure of the deal)? What alternative structures were available to the parties? Why did the parties pick the one they picked?

Was there a run-up in Dollar Thrifty's stock price prior to the announcement of the merger agreement? If so, why do you think that happened?

Was there a run-up in Hertz's stock price prior to the announcement of the merger agreement? If so, why do you think that happened?

What happened to the Dollar Thrifty and Hertz stock prices after the announcement? What are the implications of the post-announcement price behavior of the two stocks?

[1] The second part of the homework assignment applies these materials to a recent major deal. I encourage you to work in groups to do this part of the problem.

Finally, we will explore the antitrust obstacles Hertz and Dollar Thrifty perceived in closing their 2010 deal and how the parties allocated the antitrust risk associated with these obstacles in the merger agreement.[2]

First, read the excerpts from the Background and Reasons for the Offer in the Form S-4 that Hertz filed on May 9, 2011 (pp. 42-49).[3] This describes the sequence of negotiations between Hertz and Dollar Thrifty leading to the signing of the 2010 agreement.

Cast of Characters

Mark P. Frissora, Hertz's Chairman and Chief Executive Officer
Debevoise & Plimpton LLP, Hertz's deal and co-regulatory counsel
Jones Day, Hertz's co-regulatory counsel

Scott L. Thompson, Dollar Thrifty's President and Chief Executive Officer
Cleary Gottlieb Steen & Hamilton LLP, Dollar Thrifty's deal and regulatory counsel

As you read these excerpts, note that to the Dollar Thrifty board "transaction certainty was of paramount importance" and as a result "regulatory issues" (i.e., antitrust obstacles) were a major consideration. Focus on the role that regulatory issues and the allocation of risk play in these negotiations. In particular, note how Dollar Thrifty maneuvered to increase both the bid price and the certainty of closing.

There are no class notes for this class. If you have any questions or comments, send me an e-mail.

[2] For a more complete collection of materials on the Hertz/Avis Budget/Dollar Thrifty transaction than are in the reading materials, including press releases, investor presentations, SEC filings, background information, and commentary, see the DOJ/FTC Merger Review and Settlement Procedures page on AppliedAntitrust.com.

[3] A Form S-4 is required by the Securities and Exchange Commission (SEC) in connection with the registration under the Securities Act of 1933 of securities to be issued. Since Hertz was issuing new securities as part of the consideration to be paid to the Dollar Thrifty shareholders, it had to file a Form S-4. This particular S-4, while it covers the 2010 deal, was filed in connection with a subsequent attempt by Hertz to acquire Dollar Thrifty, so do not get confused by the dates. For more on S-4s, see Practical Law Corporate & Securities, Registration Statement: Form S-4 and Business Combinations.